By paragraph (b) of section 32 of the Election Offences Ordinance, 1954 the election of a candidate at any election shall be declared to be void on an election petition on the ground mentioned therein which may be proved to the satisfaction of the Election Judge, namely, non-compliance with the provisions of any written law relating to any election, if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election.

The question for determination by the court can therefore be put in different words so as to bring it in consonance with the above provisions i.e. whether the decision of the returning officer in rejecting the nomination paper amounts to a non-compliance on his part with the law relating to election.

On the question in issue one of the main requirements of the Regulations as indicated above is that the candidate must consent to the nomination. The candidate did consent. He affixed his signature which was attested in the manner and on the spot as set out in the Form.

Regulation 28 of the Regulations provides that no misnomer or inaccurate description of any person or place named or described in any notice or other document whatsoever prepared or issued under or for the purposes of these Regulations shall in any wise affect the operation of these Regulations as respects that person or place if that person or place is so designated in such notice or document as to be identifiable.

There is no suggestion in this case that the omission to fill in the name of the petitioner on the dotted line in the attestation clause amounts to a misnomer or an inaccurate description. It is not even disputed that the person referred to in the form is other than the petitioner. What is contended in effect is that the form must be faithfully followed and any omission, however slight, is a non-compliance of the Regulations rendering the nomination void.

Section 7 of the Interpretation and General Clauses Ordinance, 1948, provides that save as otherwise expressly provided, wherever forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead shall not invalidate them.

There is no express provision in the Regulations requiring that in completing a form prescribed thereby there can be no deviation.

As far as I can see the effect of these two provisions is that an omission should not be regarded as a non-compliance with the Regulations unless it amounts to a misnomer or an inaccurate description within the meaning of regulation 28 or unless it affects the substance or is calculated to mislead. As a matter of general guidance, a returning officer should not insist upon absolute accuracy in completing a nomination paper but there must be substantial compliance with the material requirements of the Regulations, particularly with those regarding description or particulars which are to be given in the nomination paper.

It is therefore clear that the returning officer did not have regard to these two provisions in arriving at his decision. It should have been obvious that in the form as completed the omission is utterly inconsequential. Indeed to insert the name in the clause is to state the obvious. In my judgment, therefore, the returning officer erred in his decision. Although Parliament has now been dissolved and the first respondent is no longer a member of that august body, there seems to be nothing to prevent this determination from being made.

In accordance with section 36 of the Election Offences Ordinance, 1954, I therefore determine that the election of the first respondent was void. In view of section 37 of the Ordinance, I shall also report to the Election Commission that no corrupt or illegal practice has been proved to have been committed.

The petition is allowed with costs.

Petition allowed.

Solicitors: *V. Veerappan & Co.*; *Ten Chin Yong.*

PUBLIC PROSECUTOR v. CHANG HUI PAT

[A.Cr.J. (Ibrahim J.) March 27, 1969]
[Malacca — Criminal Appeal No. 36 of 1968]

Road Traffic — Construction and use of vehicle — Vehicle emitting smoke — Likely to cause annoyance to any person — Whether there must be a complaint by a specific person — Motor Vehicles (Construction and Use) Rules, 1959, r. 107 and Road Traffic Ordinance, 1958, s. 146(1)(d).

The respondent was acquitted and discharged at the close of the prosecution case on the following charge: "That you on 29.4.67 at about 10.00 a.m. at 4½ m.s. Jalan Malim, Melaka, in the State of Melaka, being the driver of a motor car taxi No. MA 2211, did use the said vehicle on the road emitting smoke, the emission of which was likely to cause annoyance to any person, and that you have thereby committed an offence under rule 107 of the Motor Vehicles (Construction & Use) Rules, 1959, and punishable under section 146 (1)(d) of the Road Traffic Ordinance, 1958."

The learned magistrate held the view that for this offence to be committed there must be a complaint by a specific person that the smoke emitted was likely to cause annoyance to him and in this case the prosecution had not produced such a person.

Held, allowing the appeal: as in this case the prosecution witness who had seen the smoke emitted expressed the opinion that it was likely to cause annoyance to others and one of them had given the reason why he was of that opinion, a case had been made out by the prosecution which if unrebutted would warrant a conviction.

Order of acquittal and discharge set aside and case remitted back to the learned magistrate to call upon the defence.

Case referred to:—

(1) *Maguire* v. *Crouch* [1941] 1 K.B. 108.

MAGISTRATE'S CRIMINAL APPEAL.

Hassan bin Ishak (Deputy Public Prosecutor) for the appellant.

Syed Hassan Al-Jeffri for the respondent.

Ibrahim J.: This is an appeal by the Public Prosecutor against the decision of the learned magistrate acquitting and discharging the respondent at the close of the prosecution case on the following charge:—

"That you on 29.4.67 at about 10.00 a.m. at 4½ m.s. Jalan Malim, Melaka, in the State of Melaka, being the driver of a motor car taxi No. MA 1211, did use the said vehicle on the road emitting smoke, the emission of which was likely to cause annoyance to any person, and that you have thereby committed an offence under rule 107 of the Motor Vehicles (Construction & Use) Rules, 1959, and punishable under section 146(1)(d) of the Road Traffic Ordinance, 1958."

To establish the charge the prosecution produced two witnesses. According to P.W.1, Police Sgt. 11773, he saw the car driven by the respondent which was coming from the direction of Malacca towards Alor Gajah emitting a lot of smoke sufficient in his opinion to cause annoyance to those persons who might be following it by blocking their view. He stopped the car. The vehicle examiner, P.W.2, examined the car and when he pressed the accellerator half-way down, the engine emitted excessive black smoke which, according to him was likely to cause annoyance to others. P.W.2 did not notice the car until it was stopped but the smoke emitted when he pressed the accellerator, tended to corroborate what P.W.1 had seen before the car was stopped.

The learned magistrate held the view that for this offence to be committed there must be a complaint by the specific person that the smoke emitted was likely to cause annoyance to him and as the prosecution had not produced such person he acquitted and discharged the respondent without calling for his defence.

The charge in this case was not that the smoke emitted had caused annoyance to any person but was that it was likely to cause annoyance to any person and in my view the learned magistrate was wrong in holding that there must be a specific person to whom annoyance was likely to be caused by the smoke emitted.

Section 50 of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43) provides that:—

"If any person in charge of a vehicle causes or permits the vehicle . . . . to remain at rest on any road in such a position or in such condition or in such circumstances as to be likely to cause danger to other persons using the road, he shall be guilty of an offence."

In *Maguire* v. *Crouch* [1] which deals with the said section 50, Lord Caldecote C.J. in the course of his judgment at page 110 said:—

"In my opinion emphasis is to be placed on the words 'likely to cause danger.' I do not think they mean the same as 'is causing danger.' It is sufficient if the vehicle is left in such circumstances as to be likely to cause danger, without the danger being actually caused."

As in this case both P.W.1 and P.W.2 who had seen the smoke emitted expressed the opinion that it was likely to cause annoyance to others and as P.W.1 had given the reason why he was of that opinion I am of the view that a case had been made out by the prosecution which if unrebutted would warrant a conviction.

I therefore allow the appeal, set aside the order of acquittal and discharge and remit this case back to the learned magistrate for the defence to be called.

Appeal allowed.

Solicitors: *Aljeffri & Co.*

NG CHUAN SENG v. TAN AH YOKE

[A.C.J. (Ibrahim J.) March 27, 1969]
[Malacca — Civil Appeal No. 9 of 1968]

Family Law — Maintenance order — Inadmissible evidence — Maintenance order set aside.

Evidence — Evidence of Senior Chinese Affairs Officer before whom parties had appeared — Whether without prejudice.

In an application by a wife for maintenance evidence was given by a Senior Chinese Affairs Officer before whom the parties had appeared with a view to reconciliation. The magistrate took the evidence of the officer into consideration and ordered the husband to pay maintenance. Counsel for the husband had objected to the evidence of the officer. The husband appealed against the maintenance order.

Held, allowing the appeal: as what took place before the Senior Chinese Affairs Officer was without prejudice his evidence was not admissible, and in the circumstances of this case the maintenance order must be set aside.

Cases referred to:—

(1) *McTaggart* v. *McTaggart* [1948] 2 All E.R. 754; [1949] P. 94; [1949] L.J.R. 82.